

REMARKS

Claims 1 and 4 remain pending. By this amendment, claims 2-3 and 5-22 are cancelled, without prejudice and disclaimer. Applicants reserve the right to pursue the cancelled claims in a divisional or continuation application(s).

Applicants have revised claim 1 by incorporating the recited elements of claim 2, and claim 2 has been cancelled. In particular, claim 1 has been amended by addition of the phrase "in the presence of a base" between the phrases "ketones and nitrile" and "to obtain" at line 13. These amendments are supported by the entire specification, particularly at page 11, paragraph 6, lines 29-35; page 13, lines 11-21; page 21, lines 21-35; page 22, lines 8-11; and page 33, lines 31-36, and do not introduce new matter. Accordingly, entry of these amendments is earnestly requested.

Rejections Under 35 U.S.C. §102(a)

On pages 2-3, section 1 of the Office Action, claims 5 and 7 stand rejected under 35 U.S.C. §102(a), as being anticipated by Bennett *et al.*, "Synthesis of 2-Methoxydibenzo [b,f](1,4)-Thiazepin-11(10H)-One-5,5-Dioxide," *Organic Preparations and Procedures Int.*, **6(6):287-293**, 1974 (hereinafter "Bennett"). Applicants respectfully traverse this rejection.

In light of the cancellation of claims 5 and 7, Applicants believe that the rejection is moot. Accordingly, reconsideration and withdrawal of the rejected claims based on section 102(a) is earnestly requested.

Rejections Under 35 U.S.C. §102(b)

On page 3, section 2 of the Office Action, claims 1, 2 4, 5, 7 and 9 stand rejected under 35 U.S.C. §102(b), as being anticipated by Kuti *et al.*, "Novel Reactions of Spirosulfurane Precursor Sulfides and Sulfoxides." *Phosphorus, Sulfur and Silicon*, **85:119-127**, 1993 (hereinafter "Kuti"). Applicants respectfully traverse this rejection.

Independent claim 1 has been amended to include recited elements of dependent claim 2. Claim 2 has been cancelled, along with claims 5 and 7. Applicants had previously cancelled claim 9 in response to non-final Office Action mailed October 20 2004.

As amended, Applicants respectfully submit that Kuti fails to teach or suggest a process for preparing a dibenzothiazepine compound wherein the first step reaction, *i.e.*, *the reaction between nitrobenzene compound and the thiosalicylic acid compound employs a combination of a specifically selected polar solvent and a base*. Instead, the corresponding first reaction of Kuti employs a combination of pyridine and copper (I) oxide (Cu₂O). See Kuti at page 120. Pyridine is not included in the specifically recited polar solvent group of claim 1. In addition, Cu₂O is not a base. Moreover, the reaction employing compound 14 as the starting material, as taught and suggested by Kuti at page 121, utilizes pyridine-DMF as the solvent and Cu₂O as the base. This reaction, as set forth by Kuti, is different from and not taught by the claimed process of the present invention because Kuti's compound 14 is distinct from any of the recited nitrobenzene compounds of claim 1.

In view of the above reasons and amendments, Applicants respectfully submit that Kuti fails to describe the invention as claimed herein. Accordingly, Applicants respectfully submit that the rejection under § 102(b) should be withdrawn.

Rejections Under 35 U.S.C. §103(a)

On page 4, section 3 of the Office Action, claims 5 and 7 are rejected under 35 U.S.C. §103(a), as being unpatentable over Bennett *et al.*, "Synthesis of 2-Methoxydibenzo [b,f](1,4)-Thiazepin-11(10H)-One-5,5-Dioxide," *Organic Preparations and Procedures Int.*, **6(6)**:287-293, 1974 (hereinafter "Bennett"). Applicants respectfully traverse this rejection.

Similar to the above-mentioned anticipation rejection, Applicants believe that cancellation of the both claims 5 and 7 renders this rejection moot. Accordingly, reconsideration and withdrawal of the rejected claims based on section 103(a) is respectfully requested.

Lastly, on pages 4-5, section 4 of the Office Action, claims 1, 2, 4, 5 and 7 are rejected under 35 U.S.C. §103(a), as being unpatentable over Kuti *et al.*, "Novel Reactions of Spirosulfurane Precursor Sulfides and Sulfoxides." *Phosphorus, Sulfur and Silicon*, **85**:119-127, 1993 (hereinafter "Kuti"). Applicants respectfully traverse this rejection.

As explained above, Kuti fails to teach or suggest a claimed process for preparing a dibenzothiazepine compound wherein the first step reaction, *i.e.*, *the reaction between*

nitrobenzene compound and the thiosalicylic acid compound employs a combination of a specifically selected polar solvent and a base. Moreover, the claimed process is more beneficial than Kuti's process on the ground that the first reaction step of the claimed process produces an extremely higher yield of reaction product, as previously stated (see Applicants' Response to Non-Final Office Action dated April 20, 2005).

Based on the foregoing, Applicants respectfully submit that Kuti fails to teach or suggest all the features of claimed process of the present invention. As such, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness. Accordingly, the rejection under 35 U.S.C. § 103(a) should be withdrawn.

CONCLUSION

For at least the reasons set forth above, Applicants respectfully submit that this application is in condition for allowance. Favorable consideration and prompt allowance of the claims are earnestly solicited. Filed concurrently herewith is a Request for a Two-Month Extension of Time, along with the requisite fee, which extends the shortened statutory period of response to December 6, 2005.

The Commissioner is hereby authorized to charge any payment deficiency to deposit account number 19-2380 referring to attorney docket number 740709-000493. Should the Examiner believe that anything further is desired in order to place the application in even better condition for allowance, the Examiner is invited to contact the undersigned at the number provided below.

Respectfully submitted,

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By: *Cecilia A. Lopez-Chua*
Cecilia A. Lopez-Chua
Registration No. 48,627

JLC/CLC

NIXON PEABODY LLP
Suite 900
401 9th Street, N.W.
Washington, DC 20004-2128
(202) 585-8000